

20 MAR 2006



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
NISHIKAWA, Kazuo, et al.	:	
Application No.: 10/510,210	:	
PCT No.: PCT/IB03/01250	:	DECISION ON
Int. Filing Date: 07 April 2003	:	
Priority Date: 05 April 2002	:	PETITION UNDER
Attorney Docket No.: 4978-0101PUS1	:	
For: METHOD OF ESTIMATING	:	37 CFR 1.47(a)
ELIMINATION OF MICROORGANISMS	:	
AND APPARATUS FOR ESTIMATING	:	
ELIMINATION OF MICROORGANISMS	:	

This is a decision on applicants' petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 26 September 2005.

BACKGROUND

On 07 April 2003, applicants filed international application PCT/IB03/01250. A copy of the international application was transmitted to the Office on 16 October 2003. The thirty-month period for paying the basic national fee in the United States expired at midnight on 05 October 2004.

On 05 October 2004, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 25 February 2005, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 26 September 2005, applicants submitted the petition under 37 CFR 1.47(a) and the fee for a five month extension of time.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign after being presented with the application papers or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1) and (4) have been satisfied. The petition fee has been paid. The declaration complies with 37 CFR 1.497(a)-(b) and 37 CFR 1.47(a).

Item (2) has not been satisfied. Applicants requested that Mr. Aoki sign a declaration by sending messages through his place of employment. A refusal by conduct requires presentation with a complete copy of the application papers, including the declaration and a subsequent refusal. Applicants have not established either that the proper papers were supplied or that the papers were received by Mr. Aoki. Applicants indicate that Mr. Aoki is sick and is not at work. Ordinarily, the application papers should be sent to the last known residence of the inventor. Additionally, copies of documentary evidence including emails, translations and return mail receipts should be submitted.

Further, applicants' statements about the health of Mr. Aoki and applicants' indication that they also sought the signature of a relative raise 37 CFR 1.43 concerns. Should Mr. Aoki be legally incapacitated, his legal representative may sign the declaration on his behalf. A relative who is not his legal representative would not be sufficient. If Mr. Aoki is not legally incapacitated, he must sign.

Item (3) has not been satisfied. Applicants have supplied a business address for Mr. Aoki. Ordinarily, the last known address of the inventor is the last known residence. MPEP 409.03(e).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a). No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Erin P. Thomson
Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: (571) 272-3292
Facsimile: (571) 273-0459